

No credit for Retailers' Occupation Tax may be allowed or refund made for any amount paid by or collected from any claimant unless it appears that the claimant has borne the burden of the tax erroneously paid or the claimant has unconditionally repaid the amount of the tax to the vendee from whom it was collected. See the enclosed copy of 86 Ill. Adm. Code 130.1501. (This is a GIL).

May 25, 1999

Dear Xxxxx:

This letter is in response to your letter dated April 29, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I'm in need of assistance. Farmers settled a total loss claim with our insured, NAME and utilized an RVT-7 sales tax transaction when they purchased their new, replacement vehicle from BUSINESS. Just before the sale, BUSINESS changed their ST-556 number, rendering our RVT-7 useless. Our insured paid full tax on this transaction and was reimbursed by us 8 months later when it was brought to our attention.

An application for refund of the original \$250.00 paid to the State via the RVT-7 was rejected. The proper RVT-2 form was used, but a representative from the State explained that the dealership amended the original ST-556 and indeed did utilize the original \$250.00 tax, and now have a tax surplus in excess of \$930.00. We are seeking the tax refund from BUSINESS. Their Finance Manager hasn't been cooperative.

Enclosed are the pertinent documents to verify above mess. Please write or call me with direction as to how to proceed in recapturing over \$900.00 in tax credit from BUSINESS. My phone number is ####.

Although we cannot answer your specific question in the context of a General Information Letter, the following description of the requirements for a claim for credit should be useful.

If a taxpayer (retailer) pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. No credit may be allowed or refunded made for any amount paid by or collected from any claimant unless it appears that the claimant has borne the burden of the tax erroneously paid or the claimant has unconditionally repaid the amount of the tax

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to the vendee from whom it was collected. See subsection (a) of the enclosed copy of 86 Ill. Adm. Code 130.1501.

If the retailer collected a corresponding Use Tax liability from the purchaser, Section 6 of the Retailers' Occupation Tax Act specifically provides that:

"No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears that the claimant unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Use Tax Act." 35 ILCS 120/6 (1996 State Bar Edition).

If the Department discovers that the retailer who has filed a claim for credit has not borne the burden of the tax or has failed to unconditionally refund the tax collected from the purchaser, the Department will not approve that claim for credit. If the Department becomes aware of such a situation after a claim for credit has been approved, the issue will be referred to the Department's Audit Division for a determination of any tax, penalty, and interest that is due from the retailer.

Because of the information contained in your letter, we are referring your letter to the Department's Audit Selection Division. Please feel free to provide a copy of this letter to your insured and the dealership.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.